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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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INDEMNITY INSURANCE COMPANY OF NORTH AMERICA,	:	ECF CASE
	:	
Plaintiff,	:	07 Civ. 4807 (CM)
	:	COMPLAINT
- against -	:	
LAKEVILLE MOTOR EXPRESS, INC.;	:	
H & B TRUCK LINE INC.;	:	
	:	
Defendants.	:	

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Plaintiff, through its undersigned attorney, alleges as follows for its complaint
against defendants:

1. Plaintiff Indemnity Insurance Company of North America is a corporation organized under the laws of, and with its principal place of business in, the state of Pennsylvania. Plaintiff maintains an office at 140 Broadway, New York, New York, and sues herein as subrogated insurer of the cargo in suit, having paid the insurance claim of Graco Inc., and for and on behalf of the shipper, consignee and owner of the cargo as their interests may appear.

2. Defendants are believed to be corporations organized under the laws of, and with their principal places of business in, certain of the fifty states.

3. This Court has jurisdiction over the subject matter to this action pursuant to 28 U.S.C. § 1331 as this action arises from the carriage of goods in interstate commerce and is governed by federal statutes and federal common law related thereto. Concurrently there is pendent, ancillary and supplemental jurisdiction as to certain aspects of the claims in suit.

4. Upon information and belief defendants at all material times conducted business within the State of New York, including the pick up, carriage and delivery of cargo, and the provision of services related thereto, and are subject to the *in personam* jurisdiction of this Court.

5. This action involves damage to a shipment of spray guns (purchase orders no.: AF99490 and AF99491) consigned to Graco Inc. and which moved from Roseville, Minnesota, and Aurora, Illinois, to Sioux Falls, South Dakota, as described more fully in Lakeville Motor Express, Inc. pros: 3251369690-1 and 3251369700-8 dated on or about June 7, 2005, and others. (Lakeville Motor Express, Inc. claim no.: 2005LD04070)

6. Said damage was the result of defendants' reckless failure to properly carry and care for the cargo in suit; and their breaches of fiduciary duties owed to the owners of the cargo.

7. By reason of the aforesaid, plaintiff, and those on whose behalf it sues, has sustained damages in the amount of \$43,793.50, no part of which has been paid although duly demanded.

8. Plaintiff sues herein on its own behalf and as agent and trustee for and on behalf of anyone else who may now have or hereafter acquire an interest in this action.

9. Plaintiff has performed all conditions precedent required of it under the premises.

SECOND CAUSE OF ACTION

10. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 9 of this complaint.

11. On or about June 7, 2005 the cargo in suit was delivered in good order and condition into the custody and control of defendants for purposes of carriage to the agreed destination.

12. Defendants' failed to deliver the cargo at the agreed destination in the same good order and condition. Instead the cargo sustained damage during transport which rendered it unfit for intended usage.

13. As a result of the aforesaid, defendants are jointly and severally liable to plaintiff as common carrier, forwarder, warehouseman, and/or bailee for hire.

WHEREFORE, plaintiff demands judgment against defendants jointly and severally:

- a) for the sum of \$43,793.50;
- b) for prejudgment interest at the rate of 9% per annum;
- c) for the costs of this action;
- d) for such other and further relief as this court deems proper and just.

Dated: New York, New York
June 1, 2007

LAW OFFICES,
DAVID L. MAZAROLI

s/David L. Mazaroli

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